

April 15, 2002

SENT VIA ELECTRONIC MAIL

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room 159
Washington, DC 20580

Re: FTC File No. R411001 - Telemarketing Rulemaking

Dear Secretary:

Please find enclosed one (1) copy of the "Office of the People's Counsel for the District of Columbia's Comments" in the above proceeding. Should you have any questions, please call me at 202-727-3071.

Sincerely,

Joy M. Ragsdale
Assistant People's Counsel

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

IN THE MATTER OF)
)
Telemarketing Rulemaking - Comment) **FTC File No. R411001**
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**COMMENTS OF THE OFFICE OF THE PEOPLE’S COUNSEL
FOR THE DISTRICT OF COLUMBIA**

I. INTRODUCTION

1. Pursuant to the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking (“NOPR”) issued January 22, 2002, the Office of the People’s Counsel for the District of Columbia (“OPC-DC” or “Office”) submits its Comments on the establishment of a National Do-Not-Call Registry. The NOPR proposes amendments to the FTC’s Telemarketing Sales Rule (“Rule”), 16 C.F.R. Part 310 that would inhibit certain deceptive and abusive telemarketing acts, require disclosure of certain billing information, require express verifiable authorization for certain payment mechanisms, establish record keeping requirements, and exempt certain transactions from the Rule. The Office believes a national do-not-call registry is necessary, appropriate and otherwise in the public interest of consumers and should be enacted by the Commission.

2. As the statutory representative of District of Columbia utility ratepayers, OPC-DC welcomes the opportunity to comment on the establishment of a national do-not-call registry proposed

in the NOPR in an effort to assist the Commission in its efforts to protect consumer privacy interests.

The following comments reflect OPC-DC's belief that a coordinated federal-state scheme is essential in protecting ratepayers from abusive sales practices originating within and outside of the District of Columbia.

A. SUMMARY OF OPC'S POSITION

3. Succinctly stated, OPC supports the creation of a national Do-Not-Call registry because the proposed amendments properly balance the privacy interests of consumers with the continued development of competition in the telecommunications market. Second, OPC believes that the proposed legislation creates a centralized forum for educating and providing consumers an efficient means of learning how to minimize the number of unsolicited telemarketing sales calls received in the home. Finally, OPC submits that a national registry should complement state-enacted do-not-call registries and, therefore, act as a deterrent to unwanted and fraudulent calls made by intrastate and interstate telemarketers.

II. JURISDICTION

4. The Office of the People's Counsel is acting under authority granted by Section 34-804, *et seq.*, of the District of Columbia Code to represent the people of the District of Columbia in proceedings that involve the interests of users of the products and services furnished by public utilities under the jurisdiction of the Public Service Commission.¹ The Office's interest in this proceeding is to further the interests of D.C. consumers in reaping the benefits of a vigorous, robust and effective

¹ D.C. CODE ANN. § 34-804 (2001).

telecommunications market while balancing the need to protect District of Columbia ratepayers' privacy interests. OPC has learned through consumer inquiries and community outreach activities that District consumers, in particular senior citizens, are concerned about the onslaught of telemarketing sales calls that endlessly invade their home.

III. DISCUSSION

A. A National Do-Not-Call Registry Will Complement State-wide Enacted Registries Affording Consumers Additional Protections from Unwanted Calls

5. Under federal rules, telecommunications companies have to maintain an internal "Do-Not-Call" telephone list for a period of 10 years according to their internal procedures and policies. Accordingly, these internal procedures and policies will vary from company to company. A "Do-Not-Call" list is compiled as a result of individual customer requests submitted either orally or through written correspondence. Additionally, telephone companies can access Direct Marketing Association's ("DMA") Do-Not-Call list and retrieve a list of consumers who do not want to receive unsolicited marketing calls, however, not every business entity enlists the services of DMA. Under either method, the burden is on the consumer to monitor and take affirmative steps to prevent telemarketers from calling their residence.

6. The FTC's Telemarketing Sales Rule should not preempt state do-not-call regulations. The proposed national registry should complement "Do-Not-Call" state-wide registries enacted in several states. For example, New York, Arizona, Wyoming, Georgia, Texas, New Jersey, Maine, Oregon, Indiana, Illinois, Colorado, and South Carolina have enacted regulations in an effort to protect local consumers from unsolicited telemarketing sales calls placed by telemarketers. OPC believes a

national registry is necessary and appropriate. It will ease the burden on consumers from having to repeatedly monitor and take meticulous notes on the companies that have contacted them, and subsequently, notify those companies that they want to be placed on the do-not-call list. The cycle is endless. Consumers often complain that they must call a business several times before the request to have their name removed is processed. A national registry creates a “one-stop”, centralized and uniform reporting mechanism for consumers to eliminate their names from various companies marketing lists -- instantaneously. Consumers should be allowed to sign onto the registry by various means, for example, telephoning the FTC’s calling center, regular postal mail, electronic mail, as well as the Internet at no additional expense to the consumer. OPC-DC submits that the proposal does not unreasonably burden marketers particularly since there are less intrusive means available for business entities to reach consumers for selling their goods and services, e.g., radio, television, and newspaper advertisements, bill inserts, and postal mailings.

OPC respectfully submits the following comments on the proposed legislation:

a. Sections 310.2(d) “Caller Identification Service” Definition and 310.4(a)(6) - Blocking Caller Identification Service Information

7. OPC-DC supports the additions of Section 310.2(d) the caller identification service definition and the protections afforded under Section 310.4(a)(6) that prevents telemarketers from blocking or circumventing their identity from consumers. OPC-DC receives many complaints from consumers who must buy additional telephone service features to prevent “blocked” calls from passing into their home. Consumers should not have to expend additional monies to prevent telemarketers from deliberately blocking their identity. The calling party’s identification should be fully disclosed to the

called party in order for the consumer to effectively screen calls received in their homes. OPC recognizes that companies using multichannel trunks, i.e, T-1 may not be able to transmit their identification, however, to the extent it is technologically feasible, the Commission should prohibit telemarketers from deliberately blocking their identity from consumers.

8. OPC submits that the definitions section should include telemarketing calls that have been placed by automatic telephone dialing and autodialer equipment. Technology now affords companies the opportunity to use the electronic medium to place calls. Telemarketing calls are not always conducted by live, human personnel and therefore, the Commission should include electronic automatic dialer equipment.

b. Section 310.4(b)(2), Do-Not-Call Safe Harbor Provision

9. OPC submits that the additional monitoring and compliance requirements in the safe harbor provision under Section 310.4(b)(2) will further protect consumer privacy interests and ensure companies make a good faith effort in monitoring and complying with the new regulations. Under many state do-not-call regulations, business entities are often relieved from liability simply because they have purchased a do-not-call list and established procedures to comply with the state regulations.² There is no post-purchase monitoring to verify business entities are complying and enforcing the do-not-call regulations. In effect, the aforementioned provisions render do-not-call regulations meaningless and ineffective. There should be a blanket prohibition on companies calling a consumer who has signed the

² The District of Columbia Committee on Consumer and Regulatory Affairs of the Council of the District of Columbia's recently proposed Bill 14-186, Establishment of No Sales Call District-wide that contains a provision relieving businesses from liability if it has purchased a do-not-call list. See, Bill 14-186, Establishment of No Sales Call District-wide Registry Act of 2001 .

national registry, unless the consumer expressly authorizes that particular company to call them. Once a consumer expresses the desire to be placed on the do-not-call list, the consumer should not be called by a business entity who has purchased the most recent list or has not established a long-term business relationship with the consumer. While human error cannot always be avoided, business entities who repeatedly violate the law should not be able to avail themselves of the safe harbor provision outlined in Section 310.4(b)(2) under the proposed legislation. The Commission should clarify the number of times a business entity may violate the Rule before it is no longer eligible for relief under the safe harbor provision.

IV. CONCLUSION

10. In summary, OPC submits that the proposed amendments to the FTC's Telemarketing Sales Rule will address consumers' concerns on how to minimize the number of unsolicited telemarketing calls made to their residence. The proposed legislation strikes a proper balance in protecting the privacy interests of consumers with the continued business development in the telecommunications market.

Respectfully submitted,

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